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THE HONORABLE BENJAMIN H. SETTLE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

In re

SARAH HOOVER,

Debtor.

USDC Number: 3:21-cv-05154-BHS

Case No.: 19-42890-MJH

Internal Appeal Number: 21-T003

Adversary No.: 20-04002-MJH

SARAH HOOVER,

Plaintiff,

vs.

QUALITY LOAN SERVICE
CORPORATION OF WASHINGTON,
PHH MORTGAGE CORPORATION
D/B/A PHH MORTGAGE SERVICES,
HSBC BANK USA, N.A., AS
TRUSTEE OF THE FIELDSTONE
MORTGAGE INVESTMENT TRUST,
SERIES 2006-2, NEWREZ, LLC, AND
IH6 PROPERTY WASHINGTON, L.P.
D/B/A INVITATION HOMES

Defendants.

**APPELLANTS' RESPONSE TO
NOTICE OF SUPPLEMENTAL
AUTHORITY**

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1 PHH Mortgage Corporation d/b/a PHH Mortgage Services, NewRez, LLC, and
2 HSBC Bank USA, N.A., as Trustee of the Fieldstone Mortgage Investment Trust, Series
3 2006-2 (collectively, “Appellants”) herein file the attached Response to “Appellee’s Notice
4 of Supplemental Authority” (Doc. 17; hereinafter referred to as the “Filing”) submitted in
5 this matter by Plaintiff-Appellee Sara Hoover (“Hoover”) on April 19, 2021. Hoover’s
6 Filing is not a proper motion, pleading, or other request for relief; ignores or misrepresents
7 correct procedure; and is not helpful to the Court.

8 First, the filing does not properly place any issues before the Court. There is a
9 procedural mechanism for an appellee to contest the jurisdiction of this Court on appeal (*see*
10 FRBP 8013), and Hoover has failed to take advantage of that mechanism by filing a well-
11 supported motion with briefing that fully explains the law and how the law applies to the
12 facts in this matter. Further, it is indisputably the law that that this Court has the authority to
13 assert jurisdiction over the instant appeal whether it is interlocutory or not – *see* 28 U.S.C. §
14 158(a) – and Hoover waived any challenge to this Court’s decision to do so at this late date.
15 Pursuant to Federal Rule of Bankruptcy Procedure (“FRBP”), Rule 8004, a party who
16 opposes an appellant’s motion requesting leave to appeal an interlocutory order may file a
17 response to the motion with the district or BAP clerk hearing the appeal within 14 days after
18 the motion for leave is served. FRBP 8004(b)(2). Here, Appellants served their Notice of
19 Appeal and Motion for Leave to Appeal on February 26, 2021. (Doc. 1.) Hoover never filed
20 a response in this Court, as required. Hoover did file a response in the bankruptcy court,
21 which was transferred to this Court (Doc. 1-1), but her response did not oppose this Court’s
22 exercise of jurisdiction over the appeal if it is deemed interlocutory. (*See* Doc 1-1 at 3.) Any
23 opposition at this juncture is untimely and prejudicial.

24 Second, Hoover incorrectly contends that Appellants’ withdrawal of their Motion for
25 Leave deprives this Court of jurisdiction over this appeal. (Doc. 17 at 2.) As noted in
26 Appellants’ Notice of Withdrawal, the bankruptcy court hearing the underlying proceedings

1 determined that the instant appeal is from a final order. Even if that decision was incorrect,
2 however, this Court is entitled to exercise jurisdiction over an interlocutory appeal whether
3 or not a Motion for Leave to Appeal is filed. FRBP 8004(d); 28 U.S.C. § 158(a). FRBP
4 8003(2) specifies that an appellant's failure to take "any step other than the timely filing of a
5 notice of appeal does not affect the validity of the appeal" FRBP 8004(d) further makes
6 clear that even if an appellant files an interlocutory appeal without filing the motion for
7 leave, "the district court or BAP may order the appellant to file a motion, or treat the notice
8 of appeal as a motion for leave and either grant or deny it." Accordingly, the lack of a
9 pending Motion for Leave to Appeal before this Court has no impact on this Court's
10 jurisdiction. In the interest of fairness, in light of the substantial time spent preparing a
11 Motion for Leave to Appeal and working to comply with applicable rules, Appellants request
12 this Court consider the withdrawn motion – or provide an opportunity to re-file it and/or
13 provide further briefing – if the Court decides a further examination of the Court's
14 jurisdiction is needed.

15 Finally, the unpublished orders Hoover presents in support of her argument that the
16 order appealed from is not a final order is not helpful to this Court. First, the orders are
17 unpublished and have no precedential force. Ninth Cir. 36-3(a). The orders cannot possibly
18 overcome the binding, published, Ninth Circuit and U.S. Supreme Court precedent
19 establishing that appeals are from a final order appealable as a matter of right if the order
20 concerns (1) a finding that a willful violation of the automatic stay occurred, even if there is a
21 need for further proceedings on damages, *see In re Perl*, 811 F.3d 1120, 1123 (9th Cir.
22 2016); (2) a finding regarding the scope of the automatic stay or denying or granting relief
23 from the stay;¹ and (3) an order determining certain property is or is not part of the

24 ¹ *See Ritzen Grp., Inc. v. Jackson Masonry, LLC*, 140 S. Ct. 582, 592, 205 L. Ed. 2d 419
25 (2020) (holding denial from a motion for relief from stay was final order); *In re Nat'l Envtl.*
26 *Waste Corp.*, 129 F.3d 1052, 1054 (9th Cir. 1997) (ruling that "[o]rders granting or denying
relief from the automatic stay are deemed to be final orders;" and that decisions regarding
annulment of stay are final orders appealable as of right); *In re Rogers*, 11 F. App'x 840, 842

1 bankruptcy estate and/or compelling the turnover of property. *In re Adams Apple, Inc.*, 829
2 F.2d 1484, 1487 (9th Cir. 1987) (finding order disposing of property rights of individuals is a
3 final order). *See also In re Stasz*, 520 F. App'x 547 (9th Cir. 2013) (holding order
4 compelling turnover of estate property is immediately appealable). Indeed, it does not
5 appear that the appellant in the *In re Moon* proceedings actually briefed *In re Perl* to the
6 Ninth Circuit. *See In re: Willie Moon, et al v. Rushmore Loan Management Services, LLC*,
7 No. 21-60010, Appellants Adnette M. Gunnels-Moon and Willie N. Moon response to order
8 to show cause dated 02/24/2021 (Filed Mar. 17, 2021, Doc. 10.) Further, the *In re Moon*
9 decision is inapposite because the case was in a different procedural posture and involved a
10 different dispute between the parties. In *In re Moon*, the dispute before the Ninth Circuit
11 concerned the correctness of the BAP's Order remanding the case to the bankruptcy court
12 with instructions to explain its attorney fee award in greater detail and reconsider the
13 propriety of the award. *In re Moon*, BAP NV-20-1195-BFL, 2021 WL 408838, at *2 (B.A.P.
14 9th Cir. Feb. 4, 2021) (describing issue on appeal). Here, there is no fee award at issue;
15 rather, the dispute on appeal concerns the propriety of the bankruptcy court's substantive
16 finding that a willful violation occurred, refusal to annul the automatic stay, and order
17 disposing of individual rights in property.

18 Further, the instant case involves consideration of a District Court's jurisdiction on
19 appeal, not – as in *In re Moon* – the Ninth Circuit Court's jurisdiction. The standards are
20 different, as a District Court or the BAP has jurisdiction to hear an interlocutory order of a
21 bankruptcy court, while the Ninth Circuit only has a limited ability to hear very specific
22 types of interlocutory orders. *See* 28 U.S.C. § 158(a)(2), (d)(1). *See also Matter of*

23 _____
24 (9th Cir. 2001) (noting ordinarily a ruling on annulment of stay would be a final order
25 appealable as a matter of right); *Moore v. ING Bank, FSB*, No. C11-139Z, 2011 WL
26 3586152, at *3 (W.D. Wash. Aug. 16, 2011) (noting 9th Circuit precedent that denial or
grant of relief from automatic stay is a final order); *In re Aheong*, 276 B.R. 233, 250 (BAP
9th Cir. 2002) (holding decisions regarding annulment of stay are appealable as a matter of
right).

1 *Halvorson*, 840 Fed. Appx. 161, 165 (9th Cir. 2021). *In re Moon* is also inapposite because
2 it involved appeal from a BAP order remanding to the bankruptcy court with instructions.
3 The Ninth Circuit has a specific rule applicable to such orders, which is that “an order from
4 the BAP is not final if it remands for factual determinations on a central issue.” *In re*
5 *Marino*, 949 F.3d 483, 487 (9th Cir. 2020), *cert. denied sub nom. Marino v. Ocwen Loan*
6 *Servicing, LLC*, 20-409, 2021 WL 1072281 (U.S. Mar. 22, 2021) (internal quotations
7 omitted). Accordingly, *In re Moon* is neither binding nor persuasive authority, and cannot be
8 considered in light of the explicit Ninth Circuit authorities mentioned above.

9 DATED: May 3, 2021

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16 Investment Trust, Series 2006-2, and
17 NewRez, LLC
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CERTIFICATE OF SERVICE

On May 3, 2021, I served the foregoing document(s): APPELLANTS' RESPONSE
TO NOTICE OF SUPPLEMENTAL AUTHORITY, in the manner described below:

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